

1 Scott E. Davis  
2 State Bar No. 016160  
3 SCOTT E. DAVIS, P.C.  
4 24654 N. Lake Pleasant Pkwy.  
5 Suite 103-467  
6 Peoria, AZ 85383

7 Telephone: (602) 482-4300  
8 Facsimile: (602) 569-9720  
9 email: [davis@scottdavispc.com](mailto:davis@scottdavispc.com)

10 *Attorney for Plaintiff Ashley Hood*

11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF ARIZONA**

13 Ashley Hood,

14 Plaintiff,

15 v.

16 Life Insurance Company of North America;  
17 Darden Restaurants, Inc.; Darden Restaurants  
18 Group Life and Health Plan for Salaried  
19 Employees,

20 Defendants.

Case No.

**COMPLAINT**

21 Plaintiff, Ashley Hood (hereinafter referred to as “Ms. Hood”), by and through her  
22 attorney, Scott E. Davis, and complaining against the Defendants, she states:

23 ***Jurisdiction***

24 1. Jurisdiction of the court is based upon the Employee Retirement Income  
25 Security Act of 1974 (ERISA); and in particular, 29 U.S.C. §§ 1132(e)(1) and 1132(f). Those  
26 provisions give the district courts jurisdiction to hear civil actions brought to recover  
employee benefits. In addition, this action may be brought before this Court pursuant to 28

1 U.S.C. § 1331, which gives the Court jurisdiction over actions that arise under the laws of the  
2 United States.

3 ***Parties***

4 2. At all times relevant to this action, Ms. Hood was a resident of Pima County,  
5 Arizona.

6 3. Upon information and belief, Defendant Darden Restaurants, Inc., a Florida  
7 corporation (hereinafter referred to as the “Company”), sponsored, administered and  
8 purchased a group life insurance Policy (hereinafter referred to as the “Policy”), which was  
9 issued to the Company in the State of Florida, and the Policy is fully insured by Defendant  
10 Life Insurance Company of North America (hereinafter referred to as “LINA”).

11 4. The specific LINA group life insurance Policy is known as Group Policy No.  
12 FLX-980187 (*See* Exhibit “A”). The Company’s purpose in purchasing the Policy was to  
13 provide life insurance coverage and welfare benefits for its employees.

14 5. Through the group life insurance Policy, Ms. Hood was afforded life  
15 insurance coverage for herself and her family/dependents, and the Policy contained a  
16 feature which waived any premiums that may have been due on the Policy (hereinafter  
17 referred to as the “Life Insurance Waiver of Premium benefit”) if Ms. Hood was found to  
18 meet the definition of “Disabled” in the Policy, as is more specifically pled and explained  
19 in detail *infra*.

20 6. Upon information and belief, the Policy may have been included in and part  
21 of an employee benefit plan, specifically named the Darden Restaurants Group Life and  
22 Health Plan for Salaried Employees (hereinafter referred to as the “Plan”). The Plan may  
23 have been created to provide the Company’s employees with welfare benefits.

24 7. At all times relevant hereto, the Plan constituted an ERISA “employee  
25 welfare benefit plan” as defined by 29 U.S.C. § 1002(1).  
26



1 Waiver of Premium benefit from the Plan and the relevant Policy pursuant to § 502(a)(1)(B)  
2 of ERISA, 29 U.S.C. §1132(a)(1)(B).

3 17. In this action, Ms. Hood also seeks any other employee benefits she may be  
4 entitled to from the Plan and/or from the Company as a result of being found disabled in this  
5 action.

6 18. After being a loyal employee and working for the Company in the occupation  
7 of an Assistant Restaurant Manager, Ms. Hood became disabled from working in that  
8 occupation and also disabled from working in any occupation on or about October 20, 2017.

9 19. Due to her disabling medical conditions, Ms. Hood has remained continuously  
10 disabled from working in any occupation since October 20, 2017.

11 20. Following the onset of her disability, Ms. Hood filed a claim for the Life  
12 Insurance Waiver of Premium benefit under the relevant Policy, which was entirely  
13 administered and funded by LINA.

14 21. LINA made every decision regarding whether Ms. Hood met the definition of  
15 disability as that term is defined in the relevant Policy.

16 22. Upon information and belief, the relevant Policy's definition of disability  
17 governing Ms. Hood's Life Insurance Waiver of Premium claim is as follows:

18 "...you are disabled if because of Injury or Sickness you are unable to perform all of  
19 your material duties of your Regular Occupation. After 30 months, you are considered  
20 disabled if because of injury or sickness you are unable to perform all of the material  
21 duties of any occupation for which you are reasonably qualified based on education,  
training or experience."

22 23. Ms. Hood also filed a claim for long-term disability benefits made under a  
23 group long-term disability Policy that was issued, fully insured and administered by LINA.

24 24. LINA approved Ms. Hood's long-term disability claim and has paid her long-  
25 term disability benefits from January 18, 2018 through the present date.

1           25. Ms. Hood asserts that LINA's approval and continued payment of her long-  
2 term disability claim is relevant evidence for this Court to consider with regard to whether  
3 she is unable to work in any occupation as well as the unreasonableness of LINA's  
4 termination of her Life Insurance Waiver of Premium benefit. The approval of Ms. Hood's  
5 long-term disability claim is evidence that its termination of her Life Insurance Waiver of  
6 Premium benefit was influenced by LINA's financial conflict of interest and desire to save  
7 money by providing life insurance coverage and not waiving Ms. Hood's life insurance  
8 premium.

9           26. In support of her Life Insurance Waiver of Premium claim, Ms. Hood  
10 submitted to LINA, medical and other reliable, compelling evidence that supported her  
11 allegation that she met (and continues to meet) the aforementioned definition of Disabled as  
12 defined in the relevant Policy.

13           27. LINA initially approved Ms. Hood's claim for the Life Insurance Waiver of  
14 Premium benefit and reinstated her group life insurance coverage from October 20, 2017  
15 through April 19, 2020, when LINA terminated Ms. Hood's claim and benefit after  
16 erroneously finding that she no longer met the definition of disability.

17           28. In a letter dated December 28, 2019, LINA informed Ms. Hood that it was  
18 terminating her Life Insurance Waiver of Premium claim/benefit beyond April 19, 2020 after  
19 concluding that, "...we find the available physical information does not support an inability  
20 to perform any occupation."

21           29. Pursuant to 29 U.S.C. § 1133, Ms. Hood timely appealed LINA's December  
22 28, 2019 termination of her Life Insurance Waiver of Premium claim/benefit on June 12,  
23 2020.

24           30. In support of her Life Insurance Waiver of Premium claim and appeal of the  
25 termination of her benefits, Ms. Hood submitted to LINA a narrative letter dated November  
26

1 6, 2020 from her treating family practice physician of over four (4) years, who confirmed it  
2 is his opinion, “[Ms. Hood] has been unable to work in any job since October of 2017.”

3 31. Ms. Hood’s same treating physician confirmed in an updated narrative letter  
4 dated April 27, 2021 that it is his medical opinion, “[Ms. Hood] remains unable to work in  
5 any occupation due to her disabling physical medical conditions.”

6 32. In support of her claim and appeal, Ms. Hood also submitted to LINA a July  
7 16, 2020 Independent Medical Examination report from a rheumatologist who initially  
8 examined her in September of 2018, and concluded she was unable to work in any occupation  
9 at that time. After personally examining Ms. Hood for a second time and reviewing relevant  
10 medical records and evidence on July 16, 2020, the rheumatologist opined that, “[Ms.  
11 Hood’s] medical condition has deteriorated since September 2018...In my opinion, she  
12 continues to meet [LINA’s] any occupation definition of disability and will indefinitely.”

13 33. Ms. Hood also submitted to LINA an April 21, 2021 addendum from the same  
14 rheumatologist who after conducting an evaluation of her on February 16, 2021 and reviewing  
15 Ms. Hood’s updated medical records confirmed that, “[Ms. Hood] continues to experience  
16 significant fatigue and ongoing joint pain...”

17 34. Ms. Hood also submitted a Functional Capacity Evaluation report dated April  
18 1, 2020, authored by a qualified physical therapist who had initially evaluated her in July  
19 2018, and concluded that she was unable to work in any occupation at that time. After this  
20 second, extensive three-hour clinical interview, physical examination and simulated objective  
21 workplace testing on March 4, 2020, which produced **valid test results**, the qualified physical  
22 therapist concluded, “[Ms. Hood] is UNABLE to perform the physical demands or material  
23 duties of her past work as an Assistant Restaurant Manager or any other work including all  
24 types of SEDENTARY physical demand work on a regular and consistent basis” (original  
25 emphasis).

1           35. Ms. Hood also submitted to LINA an October 28, 2020 addendum letter from  
2 the same physical therapist who concluded, "...it should be noted that in general, many of  
3 [Ms. Hood's] disabling diagnoses have not improved since my initial evaluation in 2018."

4           36. Further supporting her claim, Ms. Hood submitted a Vocational Assessment  
5 (evaluation) dated April 28, 2021 from a certified vocational expert who initially interviewed  
6 her and concluded that she was unable to work in any occupation in September 2018. After  
7 personally interviewing Ms. Hood again and reviewing the updated relevant evidence in Ms.  
8 Hood's claim, along with the definition of "Disabled" set forth in the Policy, he concluded  
9 that, "...it remains my professional opinion, to a reasonable degree of vocational probability,  
10 that [Ms. Hood] is totally disabled and unable to work in any occupation from a physical and  
11 cognitive perspective due to her severe and chronic medical conditions."

12           37. Ms. Hood also submitted her January 15, 2021 sworn affidavit wherein she  
13 confirmed that she remains unable to work in any occupation and that her disabling medical  
14 conditions have not improved in any manner that would allow her to return to any work since  
15 she last worked on October 20, 2017.

16           38. Ms. Hood also submitted a January 15, 2021 sworn affidavit from her husband,  
17 who also confirmed she is unable to engage in any work/occupation and that her disabling  
18 medical conditions have not improved in any meaningful way that would allow her to return  
19 to any work since the date she originally became disabled as set forth herein.

20           39. Ms. Hood also submitted updated medical records from her treating medical  
21 professionals which confirmed that she remained disabled as the term is defined in the Policy,  
22 and that her disabling medical conditions have not improved in a manner that would allow  
23 her to return to any work since she became disabled.

24           40. Ms. Hood also submitted a list of her current medications, along with the  
25 adverse side effects/limitations they create for her and the reasons those side effects preclude  
26 her from being able to work in any occupation.

1           41. All of the reliable evidence Ms. Hood submitted to LINA consistently proves  
2 that she is unable to work in *any occupation* and she continues to meet the definition of  
3 disability as set forth in the Policy.

4           42. Per LINA's instruction and requirement in its January 9, 2018 letter (*See*  
5 Exhibit "B"), Ms. Hood applied for Social Security disability benefits from the Social  
6 Security Administration (hereinafter referred to as the "SSA").

7           43. LINA informed Ms. Hood in its January 9, 2018 letter that if she did not file a  
8 claim for Social Security disability benefits, it could reduce her long-term disability benefit  
9 amount (and its liability to her) by an estimate of what her Social Security disability benefit  
10 amount may be.

11           44. LINA's requirement that Ms. Hood file a claim for Social Security disability  
12 benefits when it knew she needed to be unable to work in any occupation as found by the  
13 SSA to qualify for this benefit proves that LINA believed Ms. Hood actually met SSA's  
14 definition of disability and that she was unable to work in any occupation that may exist within  
15 the national economy.

16           45. The fact that LINA believed Ms. Hood was disabled and unable to work in any  
17 occupation and therefore, entitled to Social Security disability benefits is documented by  
18 LINA's statement in its January 9, 2018 letter that if Ms. Hood did not apply for Social  
19 Security disability benefits it would begin reducing her long-term disability benefit by the  
20 estimated amount of her monthly Social Security disability benefit.

21           46. On October 2, 2019, the SSA and an Administrative Law Judge (hereinafter  
22 referred to as the "ALJ") held a hearing in Ms. Hood's claim. Ms. Hood appeared at the SSA  
23 hearing before the Judge and testified about her disabling medical conditions, as well as the  
24 resulting functional limitations she experiences which preclude her from working in any  
25 occupation.



1           47. After conducting a full hearing on October 2, 2019, and carefully listening to  
2 Ms. Hood's testimony and reviewing all the evidence (which LINA has in its possession at  
3 the date of filing this Complaint), the ALJ concluded that since October 20, 2017 (her alleged  
4 date of disability), Ms. Hood has been disabled and unable to work in any gainful occupation  
5 that may exist within the national economy as federal law defines the term.

6           48. As a result of the ALJ's decision, Ms. Hood's claim for Social Security  
7 disability benefits was approved. Ms. Hood is currently receiving Social Security disability  
8 benefits and SSA has consistently found she is entitled to those benefits since October 20,  
9 2017.

10          49. On December 12, 2019, Ms. Hood informed LINA that her claim for Social  
11 Security disability benefits was approved and she submitted a complete copy of the October  
12 8, 2019 ALJ's Social Security "Notice of Decision – Fully Favorable."

13          50. On June 12, 2020, as part of her appeal and in support of her Life Insurance  
14 Waiver of Premium claim, Ms. Hood reminded LINA that her Social Security disability claim  
15 was approved following a hearing before an ALJ and pursuant to federal law and LINA's  
16 own Regulatory Settlement Agreement (*See* Exhibit "C"), in order to afford LINA the  
17 opportunity to review *all of Ms. Hood's evidence that SSA considered in her claim*, she again  
18 submitted to LINA the SSA ALJ's October 8, 2019 Social Security "Notice of Decision –  
19 Fully Favorable," and a complete copy of her Social Security disability claim file from SSA's  
20 Office of Disability Adjudication and Review.

21          51. SSA's approval of Ms. Hood's disability claim is highly relevant and probative  
22 evidence for this Court to consider with regard to the unreasonableness and unlawfulness of  
23 LINA's termination of her claim and its violation of ERISA's regulations in failing to render  
24 a decision in her claim following her appeal of the termination of her claim.

25          52. LINA's failure to reinstate Ms. Hood's life insurance coverage and Life  
26 Insurance Waiver of Premium benefit following her appeal, and its failure to render a timely,

1 or any decision in her claim more than three (3) months after it began its review including  
2 the SSA ALJ's decision and SSA claim file, is evidence of its unlawfulness and  
3 unreasonableness that LINA did not act as her ERISA fiduciary and did not afford Ms. Hood  
4 a "full and fair" review as required by ERISA.

5 53. LINA's failure to reinstate Ms. Hood's life insurance coverage and Life  
6 Insurance Waiver of Premium benefit following her appeal, and failure to render a timely, or  
7 any valid decision in her claim when LINA has a duty to act as her ERISA fiduciary, and a  
8 duty to give significant weight to the SSA ALJ's decision, violates ERISA and the terms of  
9 its own RSA.

10 54. The SSA ALJ's approval of Ms. Hood's SSA claim is highly probative and  
11 relevant evidence of Ms. Hood's disability because the SSA ALJ is an independent,  
12 unconflicted fact finder and decisionmaker. The SSA ALJ's approval of Ms. Hood's claim  
13 after hearing her live testimony and reviewing her evidence which is essentially the same  
14 evidence LINA has in its possession, is evidence of the decision that an unconflicted and  
15 impartial decisionmaker "would have or should have" made in Ms. Hood's Life Insurance  
16 Waiver of Premium claim.

17 55. The SSA ALJ's approval of Ms. Hood's SSA claim is highly probative and  
18 relevant evidence of Ms. Hood's disability because SSA's definition of disability is similar,  
19 if not identical, to the "any occupation" definition of disability Ms. Hood must meet, as set  
20 forth in LINA's Policy.

21 56. LINA's failure to review and approve Ms. Hood's claim in the required ERISA  
22 timeframe following its receipt and review of the ALJ's favorable decision is clear evidence  
23 that LINA did not act as Ms. Hood's ERISA fiduciary and that it did not administer her claim  
24 solely in her best interests and it did not provide her with a "full and fair" review as required  
25 by ERISA.  
26

1           57. LINA has a long history, pattern and practice of engaging in conflicted, self-  
2 dealing, self-interested and parsimonious claims handling and rendering decisions which  
3 favor LINA as documented in this claim as well as the Regulatory Settlement Agreement  
4 (“RSA”) that it entered into with essentially every State, including the Arizona Department  
5 of Insurance on June 11, 2013 (the RSA is attached as Exhibit “C” to this Complaint).

6           58. On June 12, 2020, Ms. Hood reminded LINA of the RSA and its legal  
7 obligations in administering Ms. Hood’s claim pursuant to the RSA by submitting a copy of  
8 the agreement to LINA during its review of her Life Insurance Waiver of Premium claim.

9           59. The terms of the RSA require LINA to consider the approval of Ms. Hood’s  
10 SSA disability claim as well as the evidence in Ms. Hood’s SSA disability claim file.

11           60. The RSA resulted from a multistate examination of LINA’s disability claims  
12 practices which led to many regulatory concerns and a corrective action plan that LINA  
13 agreed to which included regulatory monitoring of LINA by governmental agencies in its  
14 evaluation of its disability and other claims such as Ms. Hood’s claim.

15           61. The terms of the RSA, and the claims administration responsibilities LINA  
16 agreed to comply with in the RSA apply to Ms. Hood’s Life Insurance Waiver of Premium  
17 claim and are relevant as it relates to whether LINA complied with the RSA’s terms in its  
18 review of Ms. Hood’s claim.

19           62. As part of the terms of the RSA, LINA agreed to pay \$925,000 in fines to the  
20 participating state regulatory agencies.

21           63. As part of terms of the RSA, LINA agreed to collectively pay 5 different state’s  
22 regulatory agencies hundreds of thousands of dollars for ongoing claims monitoring.

23           64. Ms. Hood alleges LINA’s review of her Life Insurance Waiver of Premium  
24 claim not only failed to comply with ERISA’s regulations, but also failed to comply with  
25 the terms of the RSA. LINA’s review violated the terms of the RSA and its review  
26 precluded a “full and fair review” pursuant to ERISA.

1           65.    Regardless of the standard of review, Ms. Hood is entitled to engage in  
2 discovery with regard to LINA's compliance with the terms of the RSA during its review  
3 and its decision making in Ms. Hood's claim, as well as its compliance with the RSA.

4           66.    All of the reliable evidence Ms. Hood submitted to LINA consistently and  
5 conclusively proves she is unable to work in *any occupation* and that she has consistently met  
6 and continues to meet the "any occupation" definition of disability set forth in LINA's Policy.

7           67.    In three (3) separate letters dated June 12, 2020, May 26, 2021 and September  
8 17, 2021, Ms. Hood requested for LINA to engage her in a "meaningful dialogue" as required  
9 by the Ninth Circuit so she could cure any alleged deficiencies that LINA believed existed,  
10 and also so she could perfect her claim as required by *Salomaa v. Honda Long Term Disability*  
11 *Plan*, 637 F.3d 958, 972 (9th Cir. 2011) and *Montour v. Hartford Life & Accident Inc. Co.*,  
12 588 F.3d 623 (9th Cir. 2009).

13           68.    LINA failed to engage in a good faith exchange during its review of Ms. Hood's  
14 Life Insurance Waiver of Premium claim.

15           69.    In a letter dated July 14, 2021 (*See* Exhibit "D"), LINA confirmed its receipt  
16 of Ms. Hood's June 12, 2020 appeal and that "your client's complete file, including any  
17 additional information submitted, will be considered during the appeal review process."

18           70.    In a separate letter also dated July 14, 2021 (*See* Exhibit "D"), LINA confirmed,  
19 "your client's [Life Insurance Waiver of Premium] claim continues to be under review" and  
20 states it would contact Ms. Hood's counsel's office "within 30 days."

21           71.    As part of its review of Ms. Hood's claim for the Life Insurance Waiver of  
22 Premium benefit, LINA obtained a medical records only "paper review" from a medical  
23 professional of its choosing, named Dr. Liarski.

24           72.    In a letter dated August 2, 2021, LINA provided Ms. Hood with written  
25 questions from its consulting physician, Dr. Liarski, to give to the rheumatologist who  
26

1 evaluated Ms. Hood and authored the July 16, 2020 Independent Medical Examination report  
2 and April 21, 2021 medical update summary.

3 73. In letters dated June 12, 2020, June 26, 2020 and June 3, 2021, Ms. Hood  
4 requested for LINA to provide her with any medical record review reports authored by any  
5 medical professional who reviewed her claim for LINA during its review so she and her  
6 medical professionals could respond as was necessary so she could perfect her claim.  
7 Although obligated to do so pursuant to ERISA and Ninth Circuit law, LINA never provided  
8 Ms. Hood with its reviewers' reports, including the report authored by Dr. Liarski.

9 74. Ms. Hood alleges that in her claim, as well as in other disability claims he/she  
10 reviews, Dr. Liarski operated under a conflict of interest due to the fact he/she is a long-time  
11 medical consultant for LINA and/or for the disability insurance industry. As a result of this  
12 longtime relationship with LINA and the disability insurance industry Plaintiff alleges he/she  
13 is biased and not impartial as it relates to the review of her claim.

14 75. Due to his/her long-time relationship with LINA and the disability insurance  
15 industry, Dr. Liarski operated under a conflict of interest and may have had incentives to  
16 protect his/her own consulting relationship with LINA and the disability insurance industry  
17 by providing a biased medical records only "paper review," which selectively reviews and  
18 ignores evidence, the type of one sided review which occurred in Ms. Hood's claim.

19 76. Dr. Liarski's conflict of interest and bias led him/her to render biased,  
20 unreasonable and implausible opinions in Ms. Hood's claim which were favorable to LINA,  
21 and which unlawfully supported LINA's untimely claim determination/approval of Ms.  
22 Hood's claim based on his/her flawed opinions and reports.

23 77. In *Black and Decker Disability Plan v. Nord*, 538 U.S. 822, 832 (2003), the  
24 Supreme Court warned about biased, conflicted insurance company retained doctors, such  
25 as Dr. Liarski, who are repeatedly retained by disability insurance companies and/or third-  
26 party vendors to review disability claims by noting, "Nor do we question the Court of

1 Appeals' concern that physicians retained by benefits plans may have an 'incentive to make  
2 a finding of not disabled' in order to save their employers money and to preserve their own  
3 consulting arrangements."

4 78. In a five (5) page letter dated August 18, 2021 (*See* Exhibit "D") Ms. Hood  
5 responded to LINA's August 2, 2021 letter and Dr. Liarski's questions, detailing the  
6 numerous reasons Ms. Hood is unable to work in any occupation and the medical  
7 professionals' opinions that support that conclusion.

8 79. In her August 18, 2021 letter, Ms. Hood informed LINA that it should  
9 immediately approve her Life Insurance Waiver of Premium claim "...particularly in light of  
10 the recent approval of her LTD claim [on July 19, 2021]. For [LINA] to deny Ms. Hood's  
11 waiver of premium claim would be a total abdication of its fiduciary duty to administer her  
12 claim 'solely in [her] best interests' as required by ERISA and federal law."

13 80. As referenced *supra*, Ms. Hood asserts that LINA's July 19, 2021 approval of  
14 her long-term disability appeal and reinstatement of her long-term disability benefits is  
15 relevant evidence for this Court to consider with regard to whether she is unable to work in  
16 any occupation as well as the unreasonableness of LINA's termination of her Life Insurance  
17 Waiver of Premium benefit.

18 81. On September 9, 2021, fifty-seven (57) days after the date LINA confirmed  
19 Ms. Hood's claim was being reviewed, in a mostly boiler-plate, system generated letter (*See*  
20 Exhibit "D") and without engaging Ms. Hood in any meaningful dialogue, LINA stated,  
21 "...we require an extension of up to 45 days to make a decision on your client's pending  
22 Waiver of Premium claim appeal...we require this extension because of the following  
23 circumstances...we have received your 8/18/2021 letter with supplemental documentation  
24 for appeal consideration. This information is currently under review." LINA further  
25 confirmed in its letter that, "we expect to make our appeal decision within 45 days and will  
26 provide you with a status update within 30 days."

1           82. On September 17, 2021 (*See* Exhibit “D”), Ms. Hood advised LINA that it was  
2 beyond its ERISA timeframe for rendering a determination in her claim (appeal) and  
3 requested for LINA to render a decision in her Life Insurance Waiver of Premium claim by  
4 October 1, 2021.

5           83. On September 24, 2021 (*See* Exhibit “D”), in another generally boiler-plate,  
6 system generated letter, without engaging Ms. Hood in any meaningful dialogue and without  
7 notification, communication and/or an explanation that any valid “special circumstances”  
8 existed such that it required additional time to complete its review for reasons beyond its  
9 control, LINA informed Plaintiff that, “your client’s claim is currently under review. We will  
10 continue with our review of your client’s claim and make our appeal determination as soon  
11 as possible...we will contact you again within 30 days.”

12           84. As of the date of filing this Complaint, it has been ninety (90) days since LINA  
13 confirmed it was reviewing Ms. Hood’s Life Insurance Waiver of Premium claim on July 14,  
14 2021, and LINA has not rendered a decision in Ms. Hood’s claim, without a reasonable or  
15 any explanation.

16           85. Throughout its review of Ms. Hood’s claim, pursuant to federal law, LINA  
17 failed to prove that a “special circumstance” existed under ERISA, which would have allowed  
18 it additional time to complete its review and render a decision.

19           86. LINA’s failure to provide any “special circumstances” under federal law that  
20 allow it to obtain additional time beyond the initial 45-day timeframe to render a decision  
21 clearly violates ERISA. *See* 29 C.F.R. § 2560.503-1(i)(1)(i), and *Salisbury v. Prudential*  
22 *Ins. Co. of Am.*, 238 F. Supp. 3d 444, 449-50 (S.D.N.Y. 2017)(The only rationale for the  
23 extension provided in the company's written notice was that Prudential needed additional  
24 time “to allow for review of the information in Ms. Salisbury’s file which remains under  
25 physician and vocational review.” But virtually every appeal of the denial of a disability  
26



benefits claim will require “physician and vocational review,” and thus this cannot constitute a valid “special circumstance”).

87. Due to LINA’s failure to render a decision the Court can defer to, and LINA’s failure to provide Ms. Hood with a reasonable claims process as required by ERISA, with the filing of this Complaint, Ms. Hood deems her claim to be exhausted pursuant to 29 C.F.R. § 2560.503-1(i)(1)(i) and (i)(3)(i).

88. Consequently, the standard of review for this Court to apply is *de novo* because at the time Ms. Hood filed this Complaint, due to LINA’s failure to provide Ms. Hood with a reasonable claims process by failing to make any decision the Court can defer to in her appeal, Ms. Hood has exhausted now all of her administrative remedies and she is permitted to file this civil action.<sup>1</sup>

89. Pursuant to 29 C.F.R. § 2560.503-1(i)(1)(i) and (i)(3)(i), due to LINA’s failure to provide a reasonable claims process due to its failure to render a decision the Court can defer to in her appeal, Ms. Hood is entitled to bring this civil action pursuant to ERISA.

---

<sup>1</sup> *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 972 (9th Cir. 2006) held, “In general, we review *de novo* a claim for benefits when an administrator fails to exercise discretion. *See Jebian*, 349 F.3d at 1106 (holding that an administrator failed to exercise its discretion when it did not make a benefits decision within the 60 days specified by the terms of the plan and the applicable regulation, so that the ultimate decision rendered was “undeserving of deference”). Other circuits have also held that review is *de novo* when the plan administrator fails to exercise discretion. *See Nichols v. Prudential Ins. Co. of Am.*, 406 F.3d 98, 109 (2d Cir. 2005) (holding that a “deemed denied” claim, in which the administrator did not issue a decision within the time required by the regulations, constituted “inaction,” which was not an exercise of discretion and which therefore was entitled to no deference; *de novo* review applied); *Gilbertson v. Allied Signal, Inc.*, 328 F.3d 625, 632 (10th Cir. 2003) (noting that “[d]eference to the administrator’s expertise is inapplicable where the administrator has failed to apply his expertise to a particular decision”); *Gritzer v. CBS, Inc.*, 275 F.3d 291, 296 (3d Cir. 2002) (“Where a trustee fails to act or to exercise his or her discretion, *de novo* review is appropriate because the trustee has forfeited the privilege to apply his or her discretion . . .”). *See Fessenden v. Reliance Standard Life Ins. Co.*, 927 F.3d 998 (7th Cir. June 25, 2019).



1           90. Pursuant to ERISA, LINA owes Ms. Hood a fiduciary duty to administer her  
2 claim solely in her best interests. LINA's ERISA violations in failing to render a decision the  
3 Court can defer to in her claim, and failure to act as her fiduciary as referenced herein are in  
4 part, the reasons why she filed this Complaint.

5           91. Before the filing of this Complaint, LINA had not shared with Ms. Hood any  
6 of the medical records only "paper review(s)" in her claim so she could respond to the  
7 report(s) and perfect her claim as allowed and required by Ninth Circuit law.

8           92. LINA's failure to provide Ms. Hood with the opportunity to respond to any  
9 medical records only "paper review(s)" is an ERISA procedural violation which precluded a  
10 full and fair review pursuant to ERISA and this action violates Ninth Circuit law.

11           93. Prior to filing this Complaint, LINA did not make a decision in Ms. Hood's  
12 appeal, even though the mandatory timeframe for rendering a decision in her claim expired  
13 on August 28, 2021 (45 days from the date LINA confirmed receipt of Ms. Hood's appeal of  
14 its December 28, 2019 termination of her Life Insurance Waiver of Premium claim/benefits).

15           94. The evidence submitted by Ms. Hood to LINA on her appeal clearly proves  
16 that she continues to meet any definition of disability in LINA's Policy, that her medical  
17 conditions have not improved in any manner which would allow her to return to work in any  
18 occupation and that she meets the definition of disability in LINA's Policy and is entitled to  
19 benefits. Consequently, Ms. Hood's claim and benefits should be reinstated.

20           95. LINA's failure to make any decision the Court can defer to in Ms. Hood's  
21 appeal violates the terms of its own Policy which required LINA to render a decision within  
22 forty-five (45) days of the date it begins its review (the Policy is attached as Exhibit "A"  
23 to this Complaint).

24           96. As a result of not making a decision within the timeframe required by LINA's  
25 Policy, LINA's review failed to comply with the terms of its own Policy and ERISA's  
26 regulations.

1        97. LINA also had a duty pursuant to ERISA to engage Ms. Hood in a good faith  
 2 dialogue to allow her to participate in LINA's review process so she had an opportunity to  
 3 cure any deficiencies LINA believed existed in her claim. LINA failed to engage Ms. Hood  
 4 in this dialogue.

5        98. During its review of her appeal, LINA either negligently, or intentionally  
 6 committed numerous ERISA procedural violations as identified herein, even though ERISA's  
 7 regulations were enacted to protect employee/beneficiary's rights such as Ms. Hood's.

8        99. LINA's ERISA violations include but are not limited to, completely failing to  
 9 credit, reference, consider, and/or selectively reviewing and de-emphasizing most, if not all  
 10 of Ms. Hood's reliable evidence which proved she met and continues to meet the definition  
 11 of disability in the Policy and allowed LINA to render a timely approval of her claim.

12        100. Had LINA considered and properly credited all of Ms. Hood's overwhelmingly  
 13 supportive medical and other evidence, it would have timely approved her Life Insurance  
 14 Waiver of Premium claim.

15        101. In evaluating Ms. Hood's claim on appeal, LINA owed her an ERISA fiduciary  
 16 duty and had an obligation pursuant to ERISA to administer her claim, "solely in [her] best  
 17 interests..."

18        102. LINA's conflict of interest as the decision-maker and provider/payor of life  
 19 insurance benefits precluded it from administering Ms. Hood's claim in her best interests. <sup>2</sup>

20        103. Due to its aforementioned conflicts of interest, LINA administered Ms. Hood's  
 21 claim solely in *LINA's best interests* and not in Ms. Hood's best interests.

---

22 <sup>2</sup> It sets forth a special standard of care upon a plan administrator, namely, that the  
 23 administrator "discharge [its] duties" in respect to discretionary claims processing "solely  
 24 in the interests of the participants and beneficiaries" of the plan, § 1104(a)(1); it  
 25 simultaneously underscores the particular importance of accurate claims processing by  
 26 insisting that administrators "provide a 'full and fair review' of claim denials," Firestone,  
 489 U.S., at 113, 109 S. Ct. 948, 103 L. Ed. 2d 80 (quoting § 1133(2)); and it supplements  
 marketplace and regulatory controls with judicial review of individual claim denials, see §  
 1132(a)(1)(B). *Metro. Life Ins. Co. v. Glenn*, 128 S. Ct. 2343, 2350 (U.S. 2008).

1        104. In addition to failing to make any decision the Court can defer to pursuant to  
2 ERISA, LINA failed to adequately investigate the claim, and failed to engage Ms. Hood in a  
3 dialogue during the appeal of her claim regarding what evidence was necessary to allow her  
4 to perfect her claim/appeal so that it could be approved.

5        105. LINA's failure to render a timely decision the Court can defer to pursuant to  
6 ERISA and failure to properly or fairly investigate the claim and to engage Ms. Hood in a  
7 dialogue, and failure to ask for and/or obtain the evidence it believed was necessary and  
8 critical to cure any deficiencies so Ms. Hood's claim could be approved is particularly  
9 egregious given the nature and severity of Ms. Hood's disabling medical conditions.

10        106. LINA's failure to make any decision the Court can defer to pursuant to ERISA,  
11 and failure to engage Ms. Hood in a dialogue during its review of her claim is evidence that  
12 LINA's conflicted and biased review was motivated by its financial conflict of interest as  
13 referenced herein.

14        107. Ms. Hood alleges that LINA's review was neither full nor fair because it  
15 violated ERISA, specifically, 29 U.S.C. § 2560.503-1, and the terms of the RSA, for many  
16 reasons including, but not limited to: failing to make any decision the Court can defer to  
17 pursuant to ERISA's regulations in Ms. Hood's claim; failing to credit Ms. Hood's credible,  
18 reliable evidence including not giving significant, or any weight to the SSA ALJ's approval  
19 of Ms. Hood's SSA claim and the ALJ's rationale for why they approved the SSA claim; by  
20 failing to retain a truly independent third party vendor to obtain medical records reviews in  
21 Ms. Hood's claim; by failing to have Ms. Hood's claim reviewed by truly independent  
22 medical professionals; by abdicating and outsourcing its ERISA fiduciary duty and retaining  
23 biased companies and medical professionals to be involved in the review of Ms. Hood's  
24 claim; by failing to fully, properly, fairly and adequately investigate Ms. Hood's claim; by  
25 failing to request for Ms. Hood to attend an Independent Medical Examination or a Functional  
26 Capacity Evaluation when the Policy allowed for one and Ms. Hood's disabling medical  
conditions and her subjective complaints, and work limitations could not be adequately

1 understood by reviewing only her medical records (this raises legitimate questions about the  
2 thoroughness and accuracy of LINA's review and its termination); by providing biased and  
3 one sided reviews of Ms. Hood's claim that failed to consider all the evidence submitted by  
4 her; by de-emphasizing medical and other evidence which supported Ms. Hood's claim and  
5 its approval; by disregarding and/or failing to consider Ms. Hood's disabling subjective and  
6 self-reported complaints/symptoms/limitations; by failing to consider the combined effect  
7 that all of her medical conditions and resulting limitations documented in her medical and  
8 vocational evidence had on her ability to work in any occupation; and by failing to engage  
9 Ms. Hood in a dialogue so she and her treating and/or evaluating medical professionals could  
10 respond to LINA's reviewing medical professional's report by submitting the necessary  
11 evidence to perfect her claim so she could prove she is disabled from working as that term is  
12 defined in the Policy.

13 108. Ms. Hood alleges a reason LINA provided an unlawful review which was  
14 neither full nor fair and that violated ERISA, specifically, 29 U.S.C. § 2560.503-1, is due to  
15 its financial conflict of interest which manifested as a result of the dual roles LINA undertook  
16 as the decision maker and the provide/payor of benefits in her claim.

17 109. LINA's conflict of interest provided it with a financial incentive to terminate  
18 Ms. Hood's Life Insurance Waiver of Premium claim, because every dollar it saved in not  
19 continuing to waive premiums on Ms. Hood's life insurance and not having to pay a potential  
20 life insurance claim, now represents profit for LINA.

21 110. LINA's actions are similar to the conflicted and unlawful review LINA  
22 previously provided where the Ninth Circuit criticized it by stating, "The plan with a conflict  
23 of interests also has a financial incentive to cheat." *Salomaa v. Honda Long Term Disability*  
24 *Plan*, 637 F.3d 958, 970 (9<sup>th</sup> Cir. 2011).

25 111. LINA's financial conflict of interest manifested when it initially terminated  
26 Ms. Hood's claim and then it failed to render any determination in her claim. In searching

1 for reasons to deny Ms. Hood's claim rather than approving it, LINA saved a *significant*  
2 *amount of money* in unpaid benefits to her.

3 112. Regardless of the standard of review, Ms. Hood is entitled to discovery  
4 regarding LINA's aforementioned conflicts of interest, its bias and business relationships  
5 referenced herein, as well as the conflicts of interest of any third party vendor retained by  
6 LINA and of any medical professional (including but not limited to Dr. Liarski) retained or  
7 identified by LINA and/or LINA's third party vendor to review Ms. Hood's claim, and of *any*  
8 individual, medical professional or otherwise who reviewed any evidence and/or participated  
9 in the review of her claim.

10 113. Regardless of the standard of review, the Court should allow discovery so it  
11 may properly weigh and consider the nature, extent and effect that *any* conflict of interest  
12 and/or any ERISA procedural violation had in influencing LINA's initial decision to  
13 terminate Ms. Hood's Life Insurance Waiver of Premium claim, as well as its failure to  
14 render any decision in the appeal of the termination of her claim.

15 114. Ms. Hood asserts that any third-party vendor retained by LINA, and in turn,  
16 any medical professional that vendor hired to review evidence in Ms. Hood's claim operated  
17 under a conflict of interest due to their business relationship with LINA and their relationship  
18 with the disability insurance industry in general.

19 115. LINA's reviewing medical professional's (Dr. Liarski) conflict of interest as  
20 referenced herein, tainted his/her opinions which resulted in his/her biased, adverse opinions  
21 against Ms. Hood which did not allow LINA to approve/reinstate her claim.

22 116. With regard to whether Ms. Hood meets any definition of disability set forth in  
23 the relevant Policy and/or Plan, the standard of review for the Court to apply is *de novo*,  
24 because at the time Ms. Hood filed this Complaint, due to LINA's failure to provide Ms.  
25 Hood with a reasonable claims process due to its failure to render a decision this Court can  
26 defer to, Ms. Hood deems her claim exhausted pursuant to 29 C.F.R. § 2560.503-1(i)(1)(i)  
and (i)(3)(i).

1        117. The standard of review is *de novo* because even if the Court concludes the  
2 Policy confers discretion, due to LINA's failure to provide a reasonable claims process and  
3 failure to render a timely decision as required by ERISA, there is no decision from LINA  
4 for the Court to defer to in Ms. Hood's claim/appeal. *See Fessenden v. Reliance Standard*  
5 *Life Ins. Co.*, 927 F.3d 998 (7<sup>th</sup> Cir. June 25, 2019).

6        118. The standard of review for the Court to apply is *de novo*.

7        119. Ms. Hood alleges that LINA failed to provide a "full and fair" review as  
8 required by ERISA, and that its termination of her Life Insurance Waiver of Premium benefits  
9 beyond April 19, 2020 is *de novo* wrong decision because her evidence proves that she did  
10 meet and continues to meet any definition of disability set forth in the Policy.

11        120. In the event the court finds the Policy lawfully confers discretion, Ms. Hood  
12 asserts the standard of review should be *de novo* because LINA did not provide a "full and  
13 fair" review as required by ERISA, and its ERISA violations are so flagrant egregious that  
14 they justify a *de novo* standard of review under Ninth Circuit law

15        121. Regardless of the standard of review, Ms. Hood is entitled to discovery  
16 regarding LINA's conflicts of interest/bias, the conflicts of interest/bias of any third-party  
17 vendors LINA may have retained and the conflicts of interest/bias of any individual who were  
18 involved in the review of Ms. Hood's claim and who may have influenced and led to LINA's  
19 failure to provide a reasonable claims process and to make a decision in Ms. Hood's claim.

20        122. Regardless of the standard of review, Ms. Hood is entitled to discovery  
21 regarding LINA's compliance with the terms of its Policy and the RSA, as well as the  
22 numerous ERISA procedural violations committed by LINA during its review of Ms. Hood's  
23 appeal and her claim.

24        123. As a direct result of LINA's decision to terminate Ms. Hood's Life Insurance  
25 Waiver of Premium benefit, as well as its failure to make any decision this Court can defer  
26 to in her appeal, she has been substantially injured and suffered damages in the form of lost  
Life Insurance Waiver of Premium benefits and continued life insurance coverage for herself

1 and her family/dependents, in addition to other potential non-disability employee benefits she  
2 may be entitled to receive through or from the Plan, as well as from any other Company Plan  
3 and/or the Company as a result of being found disabled in this matter.

4 124. Upon information and belief, Ms. Hood alleges other potential non-disability  
5 employee benefits may include, but are not limited to, health insurance benefits/coverage,  
6 other insurance related coverage/benefits, retirement benefits and/or a pension.

7 125. Ms. Hood seeks any and all employee benefits she is due and owed in this  
8 lawsuit, including but not limited to the reinstatement of the life insurance coverage Ms. Hood  
9 had for herself and her family/dependents before LINA erroneously terminated her claim. Ms.  
10 Hood also seeks the waiver of any premiums that may be due on the aforementioned life  
11 insurance coverage, and any other benefit she may be entitled to and due from Defendant as  
12 a result of being found disabled in this matter.

13 126. Ms. Hood does not seek long-term disability benefits from LINA in this action  
14 as her long-term disability claim has been approved and those benefits are currently being  
15 paid by LINA.

16 127. Pursuant to 29 U.S.C. § 1132, Ms. Hood is entitled to the reinstatement of  
17 her life insurance coverage for herself and her family/dependents and the reinstatement of  
18 her Life Insurance Waiver of Premium benefit, as well as any other non-disability  
19 employee benefits she may be entitled to, including prejudgment interest, reasonable  
20 attorney's fees and costs from Defendant.

21 128. Ms. Hood is entitled to prejudgment interest at the legal rate pursuant to A.R.S.  
22 §20-462, or at such other rate as is appropriate to compensate her for the losses she has  
23 incurred as a result of Defendant's termination and nonpayment of benefits.

24 WHEREFORE, Ms. Hood prays for judgment as follows:

25 A. For an Order finding the evidence in Ms. Hood's claim is sufficient to prove  
26 that she met and continues to meet the definition of disability set forth in the relevant Plan

1 and/or Policy, and that she is entitled to Life Insurance Waiver of Premium benefits, and any  
2 other employee benefits she is entitled to as a result of that Order, from the date LINA  
3 terminated her benefits, through the date of judgment with prejudgment interest thereon;

4 B. For an Order directing Defendants to continue providing Ms. Hood the  
5 aforementioned life insurance and employee benefits and waiving any premiums that may be  
6 due on her life insurance until such a time as she meets the conditions for the termination of  
7 benefits;

8 C. In the event the Court is unable to render a decision as to whether Ms. Hood is  
9 entitled to Life Insurance Waiver of Premium benefits from LINA for any reason, she seeks  
10 an Order remanding her claim and this case to LINA so it can review the claim again and  
11 render a determination consistent with the Order issued by the Court;

12 D. For an Order awarding Ms. Hood her attorney's fees and costs incurred as a  
13 result of prosecuting this suit pursuant to 29 U.S.C. §1132(g); and

14 E. For such other and further relief, equitable and otherwise, as the Court deems  
15 just, proper, and appropriate.

16 DATED this 12<sup>th</sup> day of October, 2021.

17 SCOTT E. DAVIS. P.C.

18 By: /s/ Scott E. Davis  
19 Scott E. Davis  
Attorney for Plaintiff